## Termination Decision Checklist

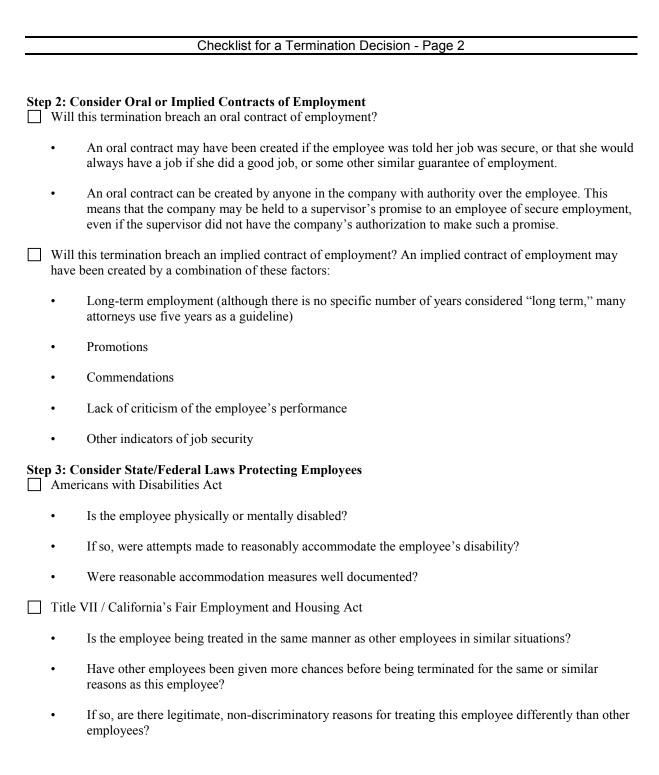
## **Presented by**

David Torres
Employer Support Group, Inc.
909-948-9500

## Checklist for a Termination Decision

The decision to terminate an employee can raise many legal issues. The following checklist is designed to help an employer determine whether the termination is likely to lead to litigation. While there is no way to guarantee an employee won't sue, using this checklist can alert the employer to potential legal problems. These problems can then be discussed with legal counsel before terminating the employee.

Ste <sub>]</sub>	<ul> <li>ep 1: Consider Company Policies and Documents</li> <li>Review the company's Employee Handbook for policies which may limit the employer's right to terminate such as:</li> </ul>		
	•	Employment at will policies	
	•	Progressive discipline policies	
	•	Internal dispute resolution or arbitration policies	
	•	Termination policies requiring "just cause"	
	Is there a written employment contract? If so, what limits does it place on the employer's right to terminate the employee?		
	If the company has an established system/policy of progressive discipline (i.e., warnings, suspension, termination), was the system followed in this case?		
	•	If so, was the process of progressive discipline well documented? Documentation of the progressive discipline is important evidence should a legal claim arise.	
	•	If not, can the company show a valid reason for its failure to follow its own policy? For example, an employer might terminate a violent employee without warnings or suspensions in order to protect other employees from harm.	
		company has an internal dispute resolution system, was the employee given a fair chance to resolve ems under that internal system?	
	emplo	the company have an established policy of giving a certain period of notice before terminating an oyee? This policy may be in writing (i.e., Employee Handbook) or may simply be an unwritten policy apployer has established by having given employees notice in the past.	



Checklist for a Termination Decision - Page 3			
	Is the employee pregnant? Employees are entitled to four months off for pregnancy-related disabilities.		
	Has the employee filed a workers' compensation claim? Terminating an employee who has filed a claim, intends to file a claim, or has testified in a worker's compensation hearing could be considered workers' compensation discrimination.		
	Has the employee reported any illegal activity of the company to a state or federal agency? Even if the company is not in fact acting illegally, the termination could be seen as retaliation for "whistle-blowing."		
	Has the employee participated in any official investigation of the employer (i.e., wage or safety violation) or testified against the employer in an unemployment insurance or other hearing?		
	Is the termination in retaliation for the employee's exercise of protected personal rights, such as freedom of speech or political activity?		
Step 4: Review Documentation  ☐ Review the employee's personnel file.			
	• Is there sufficient documentation in the file to substantiate your reasons for termination? Examples include written warnings, performance reviews and attendance records.		
	• Is there anything in the file that might be evidence of an illegal termination? For example, a superviso may have written a warning notice to the employee that her pregnancy was causing her to be absent too often. Legal counsel should be consulted if there are concerns.		
	Review personnel files for other employees who have similar problems. This comparison can point out potential discrimination issues. For example, could a female employee being terminated for attendance problems show that a male employee had the same number of absences but was not terminated?		
Ste <sub>]</sub>	ep 5: Consider the Employee's Eligibility for Unemployment Insurance A terminated employee may be eligible for unemployment insurance unless the termination is for refusal to perform suitable work or for misconduct. Mere inability to perform the duties of the job is not considered misconduct.		
	The cost to the employer's unemployment insurance reserve account may be far greater than the cost of providing the employee with necessary training or performance counseling.		
Ste <sub>1</sub>	ep 6: Consider Legal Ramifications of Not Terminating the Employee  [Failing to terminate an employee who has been violent or threatened violence could result in harm to other employees and lead to employer liability.		
	Termination of an employee who has sexually harassed other employees may be necessary to fulfill an employer's legal obligations under sexual harassment laws.		

For help with this information please contact : **David Torres Employer Support Group** 909. 948. 9500